

Approved For Release 2003/03/06 : CIA-RDP86-00101R000100020008-4

STAT SUBJECT: (Optional)

SSCI Revision of Titles I and II and Title III Draft
and Revised Draft of Title IVFROM: [REDACTED] Acting Chief, Information Services
Staff
5B2830 Headquarters

EXTENSION

NO.

DATE

5 October 1979

STAT

TO: (Officer designation, room number, and building)

DATE
RECEIVED FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Director of Communications
2. Director of Data Processing
3. Director of Finance
4. Director of Logistics
5. Director of Medical Services
6. Director of Personnel
7. Director of Security
8. Director of Training
- 9.
- 10.
- 11.
- 12.
13. OGC Has Reviewed
- 14.
- 15.

Attached are revised drafts of Titles I, II, III, and IV with explanatory comments. You will shortly receive a copy of the proposed revisions to the charter legislation resulting from meetings between the Charters Working Group, headed by Dan Silver, and the SSCI staff.

If you have any comments regarding these proposed changes, please provide them directly to [REDACTED] in OLC with an info copy to C/ISS.

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Attachments:
As stated

AC/ISS/[REDACTED]mes (9 Oct 1979)STAT

Distribution:
Orig - Addressee w/atts
1 - Ea other addressee w/atts
~1 - ISS Subj
1 - ISS Chrono

Atts: SSCI Revision of Titles I and II and Title III Draft dated 9/28/79 and Revised Draft of Title IV dted 1 Oct. 1979

OGC 79-08894

28 September 1979

MEMORANDUM FOR:

D/DCI/CT
D/DCI/RM
Attn:
C/PCS/PGI
Attn:
AI/DDA
Attn:
AD/NFAC
Attn:
SA/DDS&T
Attn:
Comptrol
Inspector
Attn:
A/DCI/PA
Attn:
Office o:
Attn:

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FROM:

[REDACTED] Special Assistant
to the General Counsel for Intelligence
Community Affairs -

SUBJECT:

SSCI Revision of Titles I and II and
Title III Draft

The SSCI staff's latest versions of Titles I and II, with explanatory comments, and Title III are attached for your information. I have made notations on Titles I and II which hopefully will aid in understanding the changes that have been made. You will see that the SSCI staff has adopted the Administration's language on a significant number of issues.

STAT

Attachments

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

24 September 1979

MEMORANDUM FOR: Department of Defense
Attn: Deanne Siemer
Department of Justice
Attn: Kenneth C. Bass
Department of State
Attn: Jeffrey Smith
Department of Treasury
Attn: J. Foster Collins
Office of Management and Budget
Attn: Arnold E. Donahue
Federal Bureau of Investigation
Attn: James Sturgis
National Security Agency
Attn: [redacted]
National Security Council
Attn: Donald Gregg
Office of the Vice President
Attn: Dennis Clift

STAT

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FROM: [redacted]
Special Assistant to the
General Counsel for Intelligence
Community Affairs

SUBJECT: SSCI Revision of Titles I and II and
Title III Draft

Attached for your information and review are the SSCI's revised Titles I and II and accompanying memoranda which explain the changes that have been made based on Working Group - SSCI staff discussions over the past two months. Also attached is the SSCI's version of Title III to amend the Foreign Intelligence Surveillance Act of 1978. Dan Silver anticipates calling an early Working Group meeting to discuss these drafts.

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Attachments

MEMORANDUM

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TO: [REDACTED]

FROM: Keith Raffel, John Elliff

DATE: September 19, 1979

SUBJECT: Title I Revisions

This memo explains the revisions in Title I that have been made to meet working group and SSCI staff concerns. Revisions proposed in the SSCI staff draft of 7/17/79 and accepted by the working group are not discussed.

Sec. 102(4)

The purpose is to ensure that "the Government of the United States" is provided with information, thereby recognizing that both the executive and legislative branches have a need for intelligence to make informed decisions. "Other forms of hostile action" is limited to action by foreign powers, organizations, or their agents, or by international terrorists, thereby excluding purely domestic threats.

(The definition of "Attorney General" is deleted so as to conform to the usage in the Act with respect to other particular officials, such as the DNI or the head of an entity of the intelligence community. In each case legislative history can discuss the appropriate scope of delegation of authority. Reference to a "designee" or to the Deputy Attorney General can be inserted if necessary in specific provisions.)

Sec. 103(3) and (5)

The term "counter or protect against" is used in the definitions of counterintelligence activity and counter-terrorism intelligence activity. Measures to "counter" clandestine intelligence or international terrorist activity may, under Title II, be directed against U.S. persons only for lawful purposes and may not be conducted to interfere with the lawful exercise of constitutional rights.

Sec. 103(8)

The definition of foreign intelligence excludes "tactical intelligence," thereby excluding tactical intelligence from the definition of "national intelligence" in sec. 104(15). However, the President is not precluded by this definition from determining that tactical intelligence regarding certain matters should be treated as national intelligence for use in the formulation and direction of national policy. (The term "departmental intelligence" is deleted as unnecessary in view of sec. 111(b).)

Sec. 103(9)

The modification "for lawful governmental purposes" is deleted from the definition of "foreign intelligence activity." Title II is sufficient to ensure that information about U.S. persons is used only for such purposes.

Sec. 103(10)

"Intelligence" includes "information relating to or resulting from any intelligence activity." This provides adequate scope for the authority to protect "intelligence sources and methods." However, the authority under Title II to collect intelligence concerning U.S. persons is limited to foreign intelligence, counterintelligence, and counterterrorism intelligence.

Sec. 103(12)

DEA is dropped as a statutory intelligence entity, but may be designated as such by the President. Presidential determinations need not be made "publicly," if so doing would disclose classified information, but the Intelligence Committees must be informed.

(The terms "intelligence method" and "intelligence source" are not defined, so as not to change existing case law.)

Sec. 103(16)(C)

Other programs designated as part of the national intelligence budget need not be "intelligence" programs. Thus, tactical intelligence programs, among others, could be included.

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Sec. 103(17)

"Proprietary" is limited to "other commercial entities" so as to exclude non-profit foundations or religious or political entities.

(The definition of "sabotage" is deleted, because it is not used in Title II.)

Sec. 103(19)

"Tactical intelligence" is not defined as "foreign intelligence," for logical consistency.

Sec. 103(20)

"United States" is defined as in FISA, to avoid confusion.

Sec. 103(21)

"United States person" is defined as in FISA, but with the agreed exceptions for permanent resident aliens and unincorporated associations abroad.

The exception for corporations abroad covers any "corporation or corporate subsidiary incorporated abroad or controlled by a foreign power abroad." Legislative history will state that such a corporation or subsidiary is excluded even if it is wholly or partially owned by a corporation incorporated in the United States.

Sec. 111(b)

The administration draft is adopted, with legislative history stating that any entity of the intelligence community, if otherwise authorized to do so, may disseminate its own analyses of national intelligence. (as in sec. 115(s) of the SSCI draft of 7/17/79).

Sec. 111(c)

The administration draft is adopted, with legislative history stating that "responsibilities under law" are limited to statutory responsibilities and do not include responsibilities under Executive Order that are affected by this Act.

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Sec. 112(b)

The President "may" (rather than "shall") establish necessary NSC committees and need not do so "by Executive Order," in order to give the President flexibility and not require disclosure of classified information. NSC committee membership for certain purposes is specified elsewhere in the Act.

Sec. 114(b)

The last sentence is revised for clarity.

Sec. 115(b)(1)-(2)

The administration draft is adopted, because national intelligence activities may be conducted by agencies other than entities of the intelligence community without DNI coordination. An example is collection of national intelligence by the Foreign Service. However, legislative history will state that special activities and counterintelligence activities abroad should normally be conducted by intelligence entities subject to DNI coordination. The President should determine whether an agency conducting such activities which is not an entity of the intelligence community should be designated as such pursuant to sec. 103(13)(L).

Sec. 115(c)

The DNI is given specific responsibility "for evaluating the quality of the national intelligence that is collected, produced and disseminated by entities of the intelligence community." This makes his mandate explicit and replaces sec. 115(h) of the SSCI draft of 7/17/79.

(Reference to the DNI role as DCIA is shifted to Title IV.)

Sec. 115(d)(1)

Reference to "foreign" intelligence is deleted as unnecessary, because this subsection only refers to "national intelligence." Thus, the administration draft is adopted.

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Sec. 115(d)(4)

This SSCI staff proposal is dropped, but a similar statement in legislative history should spell out DNI responsibility to advise the President on the designation of national intelligence activities.

Sec. 115(g)

DNI responsibility for "sensitive" activities refers to sec. 134, under which the President may designate such activities, for purposes of clarity. This DNI duty extends to activities by any agency, not just by an entity of the intelligence community.

Sec. 115(i)

The administration draft is adopted, because "organizations" allows designation of subunits of agencies.

Sec. 115(j)

The administration draft is adopted, so as not to change existing case law.

Sec. 115(k)

The administration draft is adopted to coincide with similar CIA language in existing law and Title IV, by deleting "to persons outside the government." (Reference to "the budget of the Office" is deleted, as agreed to by the working group.)

Sec. 115(l)

The last line is revised as suggested by the working group.

Sec. 115(n)

The last sentence is revised as suggested by the working group.

Sec. 115(o)

The administration draft is adopted. Review of counterintelligence activities abroad is permitted under sec. 115(p).

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Sec. 117(a)

The administration draft is adopted, with an additional sentence suggested by the working group. Assistant DNI's do not require Senate confirmation.

(Transfer of DNI duties as DCIA is covered in Title IV. Legislative veto of such transfer is deleted, but Senate confirmation of another person as DCIA is required. If that person is already Deputy DNI, re-confirmation is required. The Deputy DNI may be initially confirmed both as such and as DCIA.)

Sec. 122(a)

The phrase "or required for pay raises" is added as suggested by the working group.

Sec. 122(b)

The term "authorized intelligence activities" is adopted because the responsibilities of the Office of the DNI may extend beyond national intelligence activities, e.g., coordination of counterintelligence activities conducted abroad.

Sec. 131

The purpose of ensuring that special activities are undertaken only to meet "exceptional circumstances" describes, in the SSCI staff view, the logical effect of the authorization and review procedures under current practice and as anticipated under this Act.

Sec. 132

The revision allows the President to authorize special activities by DOD when the U.S. objective is more likely to be achieved, without limiting such activities to unusual circumstances. A category of type of such activities may be authorized, as legislative history will state.

(Legislative history will also state that DOD special activities during a period of hostilities may border on military activities. In such cases, DOD activities designed to further official U.S. policies in such a manner that the U.S. Government's role is not apparent or acknowledged publicly must

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be authorized either as special activities under this Act or as military activities pursuant to the War Powers Resolution.)

Sec. 132(b)

The NSC, rather than the President, may approve support by other agencies for special activities not involving substantial resources or risks. This is consistent with sec. 133(a)(2).

Sec. 133(a)(1)-(2)

Agreement to an "important" standard requires a Committee decision. Agreement on sections 135 and 152 is important in this respect. While a particular low-risk/resource activity need not meet this standard, the aggregate of such activities in a category or type must meet the standard.

Sec. 133(a)(3)

The President must "consider" rather than make specific findings with respect to these factors. This does not imply that special activities may be authorized if any of these requirements are not met. Rather, the revision provides statutory guidance for the exercise of discretion instead of a legalistic formula that might permit someone to label a special activity "illegal" on the grounds that one of these factors was not met.

Sec. 133(b)

The requirement to "note the views" of each NSC committee member is deleted. The last sentence is added to conform to the administration draft. Minimum NSC committee membership requirements are essential to ensure participation in decisions by the senior officials confirmed by the Senate who are expected to advise the President.

Sec. 134

The SSCI staff draft is revised to provide flexibility for the President in establishing approval procedures for other sensitive intelligence activities.

Sec. 135

This replaces the administration draft provision on "timely notice," because prior notice is essential in line with current practice. Legislative history can state that, if the President determines immediate action is required, the committees may be informed immediately of such action and the reason for taking immediate action. (Hughes-Ryan repeal is in Title VII.)

Sec. 141

The restrictions on cover and operational use of certain categories of individuals are narrowly drafted to address compelling religious, press, and educational interests. For example, they do not apply to counterintelligence activities.

Sec. 142

The restriction on covert domestic publication is revised to delete "or likely redistribution." Legislative history can state that distribution "to the public within the United States" does not mean covert support of a publication abroad that has subscribers in the U.S.

(The criminal statute on assassinations is deleted as more appropriate in criminal code revision. The criminal statute on unconsented human experimentation is deleted in view of the action by Congress in 1978 on P.L. 95-622.)

Sec. 144

The restrictions on contracting are revised to delete the requirement that concealment be necessary "to maintain essential cover or proprietary arrangements." The exception for "routine service contracts" permits agency payment of tuition and fees for employees under cover to attend educational institutions for purposes of educational advancement. However, such a concealed arrangement for operational purposes would not be a "routine service contract" and thus is prohibited.

(The section on conflicts of interest is deleted in view of recent legislation.)

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Sec. 151(c)

The administration draft is adopted. IOB functions are to be "as prescribed by the President."

Sec. 151(d)-(e)

Each entity of the intelligence community must have a general counsel and inspector general, or a person designated to fulfill those responsibilities. For example, a single official may perform such responsibilities for several entities, as with the DOD inspector general for intelligence, or for an entire department of which one component is an intelligence entity. More than one person may share these responsibilities, as with respect to the professional responsibility function for the FBI in the Justice Department. The responsibilities are those previously set forth in Title IV for CIA and Title VI for NSA. Titles IV, V, and VI cross-reference these subsections of Title I.

Sec. 151(f)(1)

The Attorney General must report to the IOB activities that involve "a question as to whether there has been a violation of law." The qualification "serious" should be reserved for (f)(2) reporting directly to the President to avoid confusion. In addition, deleting "serious" here ensures that the Attorney General has a right to be provided information by entity heads under (g)(2) concerning such activities.

Sec. 151(h)

The obligation to cooperate is placed directly on employees, as well as on entity heads to ensure such cooperation, so that employees have a duty regardless of whether or not the entity head tells them they do.

Sec. 152(b)

The administration draft is adopted, except for the addition of "published instructions."

Sec. 152(c)

Entity heads must maintain "full and complete records" to ensure accountability, and the requirement should be

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Sec. 152(d)

The administration draft is adopted as a workable procedure for notification.

Sec. 152(e)

The requirement to notify the Intelligence Committees of the facts and circumstances of any waivers is deleted; and the requirement to provide copies of all rules, regulations, procedures and directives is extended to intelligence activities generally and not just implementation of this Act.

Sec. 153(a)

The last sentence is revised to ensure that reports are made public only as consistent with subsection (b), which requires the S.Res. 400 disclosure procedure if the Executive Branch objects.

Sec. 153(b)

"Lawful" is deleted, in conformity with S.Res. 400.

Sec. 153(c)

References to "officer or employee thereof" are added, as suggested by the working group.

Add:

Sec. 117(c)

Appointment of a General Counsel for the Office of DNI is authorized, with Senate confirmation required. The General Counsel for the Office of DNI may also be General Counsel for the CIA when the DNI or Deputy DNI is CIA Director. A similar provision is in Title IV.